

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Hogarty

30389

FILE: B-217038.2 **DATE:** February 7, 1985
MATTER OF: Gem Services, Inc.

DIGEST:

1. Protest based on potential awardee's possible use of protester's employees and of proprietary information gained from those employees is essentially dispute between private parties which is not for consideration under GAO Bid Protest Procedures.
2. Protester is not an interested party to contest rejection of its bid as nonresponsive since, if protest were upheld, protester would not be in line for award.

Gem Services, Inc. protests the award of a food service contract to United Management Services, Inc. under solicitation No. F41800-84-B-8825 issued by the Department of the Air Force, San Antonio Contracting Center, Texas. We will not consider the protest.

Gem asserts that it is the incumbent contractor; that a representative of United, escorted through the dining facilities by government officials, "coerced" Gem's project manager into divulging confidential proprietary information in return for promise of future employment; and that the government was at least partially at fault because it left the United representative unescorted for a period of 1 hour on two separate occasions.

The Air Force states that the purpose of the tour by United was to permit observation of dining operations without obstructing performance; that the representative of United was properly escorted at all times; and no exchange of information between Gem's employee and the United representative occurred during the authorized tour.

First, we point out that the events complained of here occurred approximately 1 month after bid opening. Also,


031176

it is not inherently improper or unusual for a prospective awardee to recruit some number of an incumbent contractor's employees in service type contracts. It is also well-established that the protester has the burden of proving its case. International Alliance of Sports Officials, B-211755, Jan. 25, 1984, 84-1 CPD ¶ 117. The agency specifically denies that any alleged coercion of Gem's employees occurred during the site visit by United's representative or that government officials left the visitor unescorted. While Gem attempts to refute this in its comments on the agency's report, where the record consists of conflicting statements by the agency and the protester, we do not believe that the protester has established the validity of its assertion. See Crown Point Coachworks and R&D Composite Structures, North American Racing Company, B-208694, B-208694.2, Sept. 29, 1983, 83-2 CPD ¶ 386. We therefore believe that Gem has failed to meet its burden of proving any wrongful conduct on the part of agency officials. See Alchemy, Inc., B-207954, Jan. 10, 1983, 83-1 CPD ¶ 18. Thus, at best, this allegation involves a question of alleged improper business practices by United and not the government. As such, it is a dispute between private parties which will not be considered under our Bid Protest Procedures. See Computer Science Corporation, B-194286.3, July 3, 1979, 79-2 CPD ¶ 5.

Next, Gem complains that its bid was improperly rejected as nonresponsive simply because its bid bond referenced the wrong solicitation number. Under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1984), a party must be "interested" in order to have its protest considered by our Office. In general, we will not consider a party's interest to be sufficient where that party would not be eligible for award even if the issues raised were resolved in its favor. See Bay Shipbuilding Corporation--Reconsideration, B-209435.3, Dec. 7, 1982, 82-2 CPD 316. Here, United's bid is low, the responsiveness of its bid has not been challenged, and the agency considers United to be in line for award. Therefore, even if Gem's protest concerning the responsiveness of its own bid were resolved in its favor, Gem would not receive the award. Accordingly, with respect to this issue Gem is not an interested party within the meaning of our Bid Protest Procedures. See Doucette Industries, B-211887, June 17, 1983, 83-1 CPD ¶ 665.

B-217038.2

The protest is dismissed.


for the Comptroller General
of the United States